

opinions are in appropriate cases placed before juries or judges. But, except on purely scientific issues, expert evidence is to be used by the court for the purpose of assisting rather than compelling the formulation of the ultimate judgments. In the ultimate analysis it is the tribunal of fact, whether it be a judge or jury, which is required to weigh all the evidence and determine the probabilities. It cannot transfer this task to the expert witness, the court must come to its own opinion. Therefore the nature of DW2's evidence must be examined in the light of the above principles. We see nowhere in the records to suggest that the trial judge had incorrectly or improperly evaluated the evidence of DW2.

Finally, the question of the admissibility of the statements purportedly made by the appellant to the police officer, PW6, at the time of his arrest. It was argued that the trial judge erred in law in failing to direct his mind to the issue as to whether the statements, if in fact made were made voluntarily without threat, promise or inducement. As can be seen there are two sides to the question. First, it was the appellant's contention all along that he never made those statements because he was unconscious. This however was not accepted by the trial judge. The trial judge found that he was conscious and that he made the statements. The statements appear in the evidence of PW6 and corroborated by PW7. The trial judge accepted the evidence of these police officers and found that the appellant did make the statements and his finding was recorded in his judgement at page 220 as follows:—

"The accused said to Supt. Selvanayagam in the presence and hearing of ASP Ghazali:

- (a) that the Walther 7.65 automatic pistol (P23) found near the left hand finger-tips of the accused was the pistol he had robbed from Detective Hudson Ng (P.W.8);
  - (b) that the Luger pistol (P32) and two hand-grenades (P37 and P38) were bought in Siam;
  - (c) that the Beretta 6.35 Mod 950B automatic pistol (P35) was given to him by a friend.
- (see pages 37G-38A, 39B-C of Notes of Evidence).

The foregoing evidence is admissible under Regulation 21(1)(a) of the Essential (Security Cases) (Amendment) Regulations, 1975."

As clearly implied in the grounds of appeal the defence was in the alternative, i.e., it was denied that the statements were ever made and alternatively, if they were made, they should not have been admitted by the trial judge because the circumstances indicate that the statements were not made voluntarily.

The trial judge expressly referred to the admission of the statements by virtue of regulation 21(1)(a) of the Essential (Security Cases) Regulations 1975. This was a trial under the security regulations. Regulation 21 of the Regulations provides that a statement made by an accused person whether orally or in writing shall be admissible notwithstanding that such statement was made in the circumstances described in sub-paragraphs (a) to (i) of paragraph (1). Sub-paragraph (a) says that such statement shall be admissible notwithstanding that it was made to or in the hearing of a police officer provided that the police officer is not below the rank of an Inspector.

- A The absence of any reference to his finding on the voluntariness of the statements and the absence of any reference to *Johnson Tan Han Seng v. Public Prosecutor*<sup>(6)</sup> would not be sufficient grounds for us to conclude that the trial judge failed to consider the question of voluntariness. In fact if one looks at the judgment of the trial judge it is little wonder that he was not so much concerned with the allegation of threat, promise or inducement held out to the appellant but rather with the threats held out by the appellant to the police personnel. The trial judge dealt specifically with these threats. It was in evidence that the appellant when found after the gun battle, was boisterous and his conduct would seem to indicate aggressiveness rather than fear. When asked who owned the Walther pistol, the appellant replied "Saya punya." and then said "Saya dua tangan sudah jammed kalau tidak saya sudah tembak lu." (page 53 of the record). Thus looking at the judgment of the trial judge on this issue it seems clear to us that the trial judge was in fact satisfied that there was no threat, inducement or promise used against the appellant but that it was the appellant who issued threats to his captors in a classic show of bravado.

We are therefore of the view that the statements were correctly admitted by the trial judge.

*Appeal dismissed.*

- E Solicitors: Jagjit Singh & Co.

#### DIRECTOR-GENERAL OF INLAND REVENUE v. KULIM RUBBER PLANTATIONS LTD.

- F [F.C. (Suffian L.P., Wan Suleiman & Chang Min Tat FJJ.)  
October 29 & November 25, 1980]  
[Kuala Lumpur — Federal Court Civil Appeal No. 88 of 1979]

*Revenue Law — Income Tax — Deductions — Sale of rubber estates — Compensation paid to estate agents and secretaries — Whether allowable deductions — Outgoings and expenses incurred in production of income — Appeal from Special Commissioners — Question of law — Income Tax Act, 1964, s. 14.*

- G *Precedent — English, Australian and New Zealand authorities on income tax — Whether relevant.*

This was an appeal from the decision of the High Court reported in [1979] 2 M.L.J. 298. The question raised in the appeal was whether the payments paid to the agents and secretaries, who were employed in the conduct of the business of the respondents, as compensation on the sale of certain rubber estates, were deductible as being outgoings and expenses incurred in the production of income. The Special Commissioners had held the expenses were not deductible as they were capital expenditure but on appeal Vohrah J. held that the expenses were deductible. The appellant appealed.

- H **Held:** (1) the respondents were bound by contract to pay compensation for the loss in remuneration arising from the diminution in the total acreage of its holdings and had to pay this compensation in order to retain the services of the existing agents both in London and in Malaysia. The compensation could rightly be regarded as a sum paid to the agents redeeming by arrangement their future emoluments which would have been in each year attributable to revenue;

(2) where a company, in order to get rid of a contract which is of an onerous character or a servant whose continuance in service is undesirable in the company's interest, makes a payment in such circumstances it is properly to be treated as a revenue payment and a deductible expense;

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(3) in this case the finding of the Special Commissioners was a finding of law and the High Court was right in overruling the decision if satisfied that their conclusion was wrong in law.

*Cases referred to:-*

- (1) *Khalid Panjang & Ors. v. Public Prosecutor* (No. 2) [1964] M.L.J. 108.
- (2) *Lasala v. Lasala* [1979] 2 All E.R. 1146.
- (3) *Rowntree & Co. Ltd. v. Curtis* 8 T.C. 678.
- (4) *Rongpibon Tin N.L. & Anor. v. Federal Commissioner of Taxation* 78 C.L.R. 47.
- (5) *Strong & Co. of Romsey Ltd. v. Woodifield* 5 T.C. 215.
- (6) *W. Nevill & Co. Ltd. v. Federal Commissioner of Taxation* 56 C.L.R. 290.
- (7) *Ward & Co. Ltd. v. Commissioner of Taxes* [1923] A.C. 145.
- (8) *Van Den Berghs v. Clark* 19 T.C. 390.
- (9) *British Insulated & Helsby Cables v. Atherton* [1926] A.C. 205.
- (10) *The Countess Warwick Steamship Co. v. Ogg* 8 T.C. 652.
- (11) *John Smith & Son v. Moore* [1921] 2 A.C. 13; 12 T.C. 266.
- (12) *Mallett v. Stavelly Coal & Iron Co. Ltd.* [1928] 2 K.B. 405; 13 T.C. 772.
- (13) *Dain v. Auto Speedways Ltd.* (1959) 38 T.C. 525.
- (14) *Godden v. A. Wilson's Stores (Holdings) Ltd.* 40 T.C. 161.
- (15) *Mitchell v. B.W. Noble Ltd.* [1927] 1 K.B. 719; 11 T.C. 372.
- (16) *Anglo-Persian Oil Co. v. Dale* 16 T.C. 253.
- (17) *John Moore v. Stewarts & Lloyds Ltd.* 6 T.C. 501.
- (18) *W. Nevill & Co. Ltd. v. F.C.T.* (1937) 56 C.L.R. 290.
- (19) *F.C.T. v. Gordon* (1929-30) 43 C.L.R. 456.
- (20) *Wilson v. Nicholson Sons and Daniels Ltd.* 25 T.C. 473.
- (21) *C.I.R. v. Patrick Thomson Ltd. (in liquidation)* 37 T.C. 145.
- (22) *Scammell & Nephew Ltd. v. Rowles* 22 T.C. 479.
- (23) *Vallambrosa Rubber Co. Ltd. v. Farmer* 5 T.C. 529.
- (24) *Smith v. Incorporated Council of Law Reporting* 6 T.C. 477.
- (25) *J.P. Hancock v. General Reversionary & Investment Co.* 7 T.C. 358.
- (26) *Barr-Crombie & Co. Ltd. v. Commissioners of Inland Revenue* 26 T.C. 406.
- (27) *Edwards v. Bairstow & Harrison* [1956] A.C. 14.
- (28) *Comptroller-General of Inland Revenue v. T.* [1970] 2 M.L.J. 35, 38.

**FEDERAL COURT.**

*Mokhtar bin Haji Sidin* (Senior Federal Counsel) (*Zulkefli bin Ahmad Makinuddin*, Federal Counsel with him) for the respondents.

*Peter Mooney* for the respondent.

*Cur. Adv. Vult.*

**Chang Min Tat F.J.** (delivering the judgment of the Court): The question raised in this appeal is whether certain payments made by the taxpayer company (T) came within the deductible expenses as "expenses wholly and exclusively incurred during that period by such person in the production of the income" in section 14(1) of the Income Tax Ordinance 1947 (the Ordinance).

T. is a plantation group working several rubber plantations throughout the country. It employs agents under contracts. The first agreement is made on May 17, 1961 with the Eastern Industries Ltd. of London

(the London Agents) for the entire secretarial work and general conduct and management of the affairs of T. in England. The second made on March 30, 1966 is with Eastern Plantations Agency Ltd. (the Malaysian Agents) for such duties as are usually undertaken and performed by sole agents in the East of plantation companies, in particular for the forwarding of all produce from the estates of T. to the place of manufacture and the shipment of any produce as required. Remuneration in each case is calculated on so much per planted acre and a commission or commissions. It is apparent therefore that the attractiveness of the contracts of service is directly related to the total acreage of T.'s rubber plantations. Any decrease in this acreage must inevitably result in a corresponding decrease in the remuneration. For this reason, provision is made for a suitable compensation for the agents for such decrease in acreage. That in the agreement with the London Agents — Clause 12 — reads as follows:

"12. If and whenever during the currency of this Agreement the Company shall in the ordinary course of conducting its business voluntarily sell or dispose of some part of its estates the Agents shall be entitled to be paid by way of compensation for loss of commission in respect of that part a sum equal to 2½ per cent of the consideration for the sale or disposal or such higher percentage as may be agreed between the parties hereto."

The corresponding provision in the agreement with the Malaysian Agents is in clause 7 which is as follows:

"7. In the event of the sale by the Company of the whole or any part of its estates the Agents shall be paid by the Company by way of compensation for loss of earnings hereunder a sum equal to two and one-half per centum of the gross sale price."

It is stated by T. and accepted by Revenue that, in 1961, having doubts of the long-term prospects for rubber, it decided to convert to oil palms to maintain, if not to increase, its profitability, and to find the necessary finance for this conversion by the sale of the more-outlying estates, particularly those with a large proportion of old rubber-trees which yielded only a marginal profit. In furtherance of this policy, T. sold several rubber estates. The net proceeds of the sales were wholly expended on oil-palm development. In the process, the agents were paid their compensation in accordance with the provisions in Clauses 12 and 7 of the respective agreements.

The Director-General of Inland Revenue accepted these as agreed facts but disputed that these payments were deductible as expenses under section 14(1) of the Ordinance. T. contended however that the compensations were not capital expenditure as to be caught by sections 15(c) and (d) of the Ordinance, but were expenses wholly and exclusively incurred in the production of income, arising out of contractual obligations and that the fact that the payments were not referable to the profits of any particular year was irrelevant.

Before the Special Commissioners, no evidence was led and the case was argued entirely on a statement of agreed facts. The Special Commissioners agreed with Revenue. Their decision was therefore not a finding of fact but one of law. On appeal by way of case stated, the High Court overruled the

Special Commissioners and allowed the deductions of such payments. Hence this further appeal by Revenue.

The phrase "expenses wholly and exclusively incurred in the production of income" has received construction by the courts in this country but mainly in relation to expenses in connection with purchases or the costs of construction, to determine whether the expenses were capital or revenue payments. The former are not but the latter are deductible. So far as counsel can advise themselves and so far as we can advise ourselves, this is the first case with regard to payments of compensation by employers to agents or employees to come before the High Court and before us. There is therefore no local case citable to us. But there are numerous decisions of other countries, mainly Australia and New Zealand, England and Scotland. And that raises the prior question of the applicability of these decisions.

Several principles have been established. This court has laid down in *Khalid Panjang & Ors. v. Public Prosecutor (No. 2)*<sup>(1)</sup> the principle that a Privy Council decision on appeal from another country is binding on it and the other courts of this country if the appeal is on a provision of law *in pari materia* with a provision of the local law. The decision in *Lasala v. Lasala*,<sup>(2)</sup> that the Privy Council would consider itself bound by a decision of the House of Lords must extend this principle to judgments of the House of Lords. Insofar as the decisions of other courts in these and other countries are concerned, we have always treated these judgments as of only persuasive authority, but we have never lightly treated them or refused to follow them, unless we can successfully distinguish them or hold them as *per incuriam*. Other than for these reasons, we should as a matter of judicial comity and for the orderly development of law, pay due and proper attention to them. In this light we now propose to consider whether the relevant statutory provisions are similar and go on to consider the decisions in the Australian and New Zealand Courts and the Courts in the United Kingdom which have been canvassed before us and some others.

The relevant sections of the Australian Income Tax Assessment Act 1922-23 are as follows:

"S.23(1). In calculating the taxable income of a taxpayer the total assessable income derived by the taxpayer shall be taken as a basis, and from it shall be deducted — (a) all losses and outgoings (including ... expenses and not being in the nature of losses and outgoings of capital) actually incurred in gaining or producing the assessable income.

S.25. A deduction shall not, in any case, be made in respect of the following matters:

....

(e) Money not wholly and exclusively laid out or expended for the production of assessable income."

Section 23(1) is the ordinary provision for arriving at the adjusted income and section 25 is the well-known double negative which states what may or may not be deducted in order to arrive at this adjusted income. The emphasis which is supplied shows that there is very little practical difference with our section 14(1) where the deduction to be allowable must be "wholly and exclusively incurred during that period by that person in the production of gross income from that source."

A Schedule D of the Land and Income Tax Act 1842 (16 & 17 Vict. C.34), the Income Tax Act, 1918 (8 & 9 Geo. 5, C.40) and the Income Tax Act, 1952 (15 & 16 Geo. 6 & 1 Eliz.2C.10) refers to "expenses, not being money wholly and exclusively laid out or expended for the purpose of the trade, profession (employment) or vocation."

B The weight of judicial opinion seems to be against any finding that there is much material difference between the statutory provisions of these 3 countries. We need to mention only a few cases. *Rowntree & Co. Ltd. v. Curtis*,<sup>(3)</sup> at page 696, held

C "...it is clear that in order to justify a deduction being made from what I will call gross profits, it has to be shown — and I think on this onus lies upon the subject — that what is sought to be deducted is money wholly and exclusively laid out or expended for the purposes of the trade — laid out, that is, for the purpose of earning the profits." Italics supplied.

In *Ronpibon Tin N.L. & Anor. v. Federal Commissioner of Taxation*<sup>(4)</sup> at pages 56-7, the High Court of Australia ruled

D "For expenditure to form an allowable deduction as an outgoing incurred in gaining or producing the assessable income it must be incidental and relevant to that end. The words 'incurred in gaining or producing the assessable income' mean in the course of gaining or producing such income."

E To our mind, if one takes the first premise that the purpose of any trade is the profits reasonably to be derived therefrom, the conclusion is reached that "for the purpose of trade" is generally for "the production of the income". Lord Davey in *Strong & Co. of Romsey Ltd. v. Woodfield*<sup>(5)</sup> said at page 220:

"'for the purpose of the trade' appear to me to mean for the purpose of enabling a person to carry on and earn profits in the trade, etc."

F For this reason, the High Court of Australia in construing the provisions of the Australian provisions called in aid English decisions on the application of the English provisions to various circumstances. In *W. Nevill & Co. Ltd. v. Federal Commissioner of Taxation*,<sup>(6)</sup> the High Court of Australia, Latham C.J. held at page 300:

G "The payments in question were actually made *bona fide* in the course of business in the interests of the efficiency of the business. In my opinion, they fall within the terms of the proposition of Viscount Cave L.C. in *British Insulated and Helsby Cables v. Atherton* (1926) A.C. at page 212: 'A sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may not be expended wholly and exclusively for the purpose of the trade.' The words 'for the purpose of the trade' come from Schedule D of the English Income Tax Act, 1842. They do not appear in section 23(1)(a) of the Federal Act. The words in section 23(1)(a) are 'in gaining or producing the assessable income'. The principle asserted in Viscount Cave's statement is, however, equally applicable to a case arising under section 23(1)(a)."

For ourselves, we would apply the same statement to a case under our section 14(1).

I Our attention has however been drawn to *Ward & Co. Ltd. v. Commissioner of Taxes*<sup>(7)</sup> on appeal from New Zealand where the Privy Council added the *dictum* that "the decision on the English Tax Acts, the language of which is different from that of the New Zealand Act, have no real bearing upon the question now under decision." With respect, we

would, following *Lasala v. Lasala*, *supra*, follow the later case of *Atherton*, *supra*.

Lord MacMillan in *Van Den Berghs Ltd. v. Clark*<sup>(8)</sup> was of the opinion that if the numerous decisions were examined and classified, they would be found to exhibit a satisfactory measure of consistency with Lord Cave's principle of discrimination in *Atherton's* case, *supra*, which was formulated in these words at pages 213-4:

"... When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or advantage for the enduring benefit of a trade ... there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

We presume to add to Lord MacMillan's list, particularly cases decided subsequently which have been canvassed before us.

The following have been held to be capital disbursements and not deductible: a sum provided to establish a pension fund for employees: *British Insulated & Helsby Cables v. Atherton*,<sup>(9)</sup> money paid for the cancellation of a contract to supply a ship which was to be used as one of the fleet in the business carried on: *The "Countess Warwick" Steamship Co. v. Ogg*,<sup>(10)</sup> a lump sum paid to an employees' benefit fund: *Rowntree v. Curtis*, *supra*; a sum paid by a coal merchant for the acquisition of the right to a number of current contracts to supply coal: *John Smith & Son v. Moore*,<sup>(11)</sup> a payment by a colliery company as the price of being allowed to surrender unprofitable seams included in the leasehold: *Mallett v. Stavely Coal & Iron Co. Ltd.*,<sup>(12)</sup> a sum paid for the release of its obligations under the licence, *Dain v. Auto Speedways Ltd.*,<sup>(13)</sup> damages for personal injuries to a visitor to an inn: *Strong & Co. of Romsey Ltd. v. Woodfield*, *supra*; *Godden v. A. Wilson's Stores (Holdings) Ltd.*,<sup>(14)</sup> sums spent in an advertisement campaign against prohibition: *Ward & Co. Ltd. v. Commissioner of Taxes*, *supra*.

These other cases decide what are revenue expenses and deductible: a sum paid by a company as the price of getting rid of a life director whose presence on the board was regarded as detrimental to the profitable conduct of the company's business: *Mitchell v. B.W. Noble Ltd.*,<sup>(15)</sup> a payment made to disembarass the company of an onerous agency agreement: *Anglo-Persian Oil Co. Ltd. v. Dale*,<sup>(16)</sup> a sum paid to acquire a commanding interest in another company: *John Moore v. Stewarts & Lloyds Ltd.*,<sup>(17)</sup> arrangement for the abolition of the office of an additional managing director: *W. Nevill & Co. Ltd. v. F.C.T.*,<sup>(18)</sup> the annual subscription paid by the taxpayer to an association of persons and companies with mutual interests: *F.C.T. v. Gordon*,<sup>(19)</sup> a sum paid to agents redeeming further emoluments by arrangement: *Anglo-Persian Oil Co. Ltd. v. Dale*, *supra*; a sum paid to a director in consideration of the relinquishment of his rights under a service agreement: *Wilson v. Nicholson Sons and Daniels Ltd.*,<sup>(20)</sup> a sum paid to a managing director for the cancellation of their contracts: *C.I.R. v. Patrick Thomson Ltd. (in liquidation)*,<sup>(21)</sup> payment by a company to induce a

A director to withdraw a libel action against a third party: *Scammell & Nephew Ltd. v. Rowles*,<sup>(22)</sup> deductions for superintendence, weeding, etc. of a rubber estate: *Vallambrosa Rubber Co. Ltd. v. Farmer*,<sup>(23)</sup> gratuity to a reporter on his retirement: *Smith v. Incorporated Council of Law Reporting*,<sup>(24)</sup> a lump sum paid for the purchase, for the benefit of a former actuary and secretary, of an annuity because it merely anticipated payments which were or would have been in each year attributable to revenue: *J.P. Hancock v. General Reversionary & Investment Co.*<sup>(25)</sup>

B We do not however propose to quote large extracts from these several cases which have been read to us as, in our opinion, it is sufficient to note what the cases decide in order to draw the line between the two types of payments.

C The question whether a particular payment is capital or revenue is basically a question of fact and of course, every case must be considered on its own facts and no legal criterion for distinguishing between capital payments and income payments is readily available: *Barr-Crombie & Co. Ltd. v. Commissioner of Inland Revenue*<sup>(26)</sup> at page 411; but clearly where a company, in order to get rid of a contract which is of an onerous nature, or a servant whose continuance in service is undesirable in the company's interest, makes a payment, in such circumstances it is properly to be treated as a revenue payment and a deductible expense. It seems to us that the case under appeal falls on the same side of the line as *J.P. Hancock v. General Reversionary, British Insulated and Investment Society and Anglo-Persian Oil Co. Ltd. v. Dale*, *supra*.

F T. is bound by contract to pay compensation for the loss in remuneration arising from the diminution in the total acreage of its holdings and has to pay this compensation in order to retain the services of the existing agents both in London and in Malaysia. The compensation can rightly be regarded as a sum paid to agents redeeming by arrangement their future emoluments which would have been, to repeat, in each year attributable to revenue.

G We do not, with respect, agree with Revenue that the disappearance of the rubber estates that have been sold makes the compensation a capital payment. The true situation in our view is that there is no disappearance of any source of revenue; rather, the utilisation of the proceeds of sale for the conversion of the retained rubber lands into oil-palm estates results in the retention of the source of revenue from planting with, hopefully, increased revenue.

H *Godden v. A. Wilson's Stores (Holdings) Ltd.*, *supra*, on which Revenue relied strongly, can be easily distinguished. In that case the estate was sold when the estate owner clearly wished to discontinue business entirely. The payment to the manager for the six months in lieu of the contractual notice to be given by either side, in the words of Upjohn L.J., "cannot possibly be described as a payment for the purpose of trade. It was made because the company was not going on to trade, and they were left with the possibility of an action for damages against them for breaches of employment."

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Here, the taxpayer was continuing to trade and while the action for damages was always a possibility if it should refuse to abide with the terms of its agreements, the purpose was factually not to invite this action and to retain the services of the agents for the remaining acres of its estate holdings in the new role they had to play.

Revenue also suggested that within the limits of an appeal on a case stated, set out by Lord Radcliffe in *Edwards v. Bairstow & Harrison*,<sup>(27)</sup> in a well-known passage at page 35 which has been considered in the judgments of this court, *inter alia*, in *Comptroller-General of Inland Revenue, Malaysia v. T.*<sup>(28)</sup> at page 24, we should not disturb a finding of fact by the Special Commissioners. The short answer is that the finding was not one of fact but as shown earlier, a conclusion of law upon admitted facts, as in the *Godden v. A. Wilson's Stores (Holdings) Ltd.* case itself and in such a situation, the High Court was correct in overruling the decision of the Special Commissioners if their conclusion was one that was wrong in law.

The appeal is dismissed with costs.

*Appeal dismissed.*

Solicitors: *Skrine & Co.*

#### NG CHENG YOON v. MAH BINTI MAT ISA

[F.C. (Wan Suleiman, Syed Othman & Ibrahim Manan F.JJ.)  
August 1 & November 26, 1980]

[Kuala Lumpur—Federal Court Civil Appeal  
No. 158 of 1979]

*Practice and Procedure — Summary judgment given in favour of plaintiff — Whether final judgment — Appeal — No application for further argument in open court — R.S.C. 1957, O. 54 r. 22A — Courts of Judicature Act, 1964 ss. 4 & 68(2).*

In this case the respondent had applied by summons-in-chambers for specific performance of an agreement for sale of land and she had obtained summary judgment as prayed. The appellant appealed. It was argued that the appeal was not properly brought as no application had been made for further argument in open court and no certificate was given by the judge that no further argument was required.

**Held:** the judgment in this case was a final judgment and there was no necessity for the appellant to comply with Order 54 rule 22A of the Rules of the Supreme Court, 1957.

Cases referred to:-

- (1) *Bozson v. Altrincham Urban District Council* [1903] 1 K.B. 547.
- (2) *Ratnam v. Cumarasamy & Anor.* [1962] M.L.J. 330.
- (3) *Peninsular Land Development Sdn. Bhd. v. K. Ahmad* (No. 2) [1970] 1 M.L.J. 253.
- (4) *Hong Kim Sui & Anor. v. Malayan Banking Bhd.* [1971] 1 M.L.J. 289.
- (5) *Arumugam Pillai v. Government of Malaysia* [1980] 2 M.L.J. 283.

#### FEDERAL COURT.

*W.S.W. Davidson* for the appellant.

*Lalchand N. Thadani* for the respondent.

*Cur. Adv. Vult.*

Wan Suleiman F.J. (delivering the judgment of

A the Court): The respondent, plaintiff in High Court, Ipoh Civil Suit No. 69 of 1979, applied by way of summons-in-chambers for an order pursuant to Order 14A of the Rules of the Supreme Court 1957 for specific performance of an agreement dated February 1, 1969.

B In her affidavit in support of her application the respondent deposed that by an agreement in writing dated February 1, 1969 the appellant had agreed to sell and transfer to her an undivided 176/1117 share in the property held under Certificate of Title No. 3480 for Lot No. 20677 in the Mukim of Teja, District of Kinta in consideration of the sum of \$4,400.

C She duly paid this sum as was acknowledged in the agreement by the appellant. This agreement was executed before a firm of solicitors in Ipoh.

The appellant also agreed to submit an application for sub-division, which the appellant had failed to do.

D In another agreement on the same day, the appellant had also agreed to sell 841/1117 undivided share to the respondent and another 80/1117 undivided share to one Chong Wan Sen and transfer under this latter agreement was effected on April 21, 1977.

E Respondent further deposed that she was ready and willing to perform her obligations under the first mentioned agreement.

Chong Wan Sen confirmed by affidavit that he had been a witness to the first-mentioned transaction and also stated that the sum of money mentioned therein was paid in his presence by the respondent to the appellant.

F There was no affidavit in reply.

The learned trial judge granted summary judgment for the plaintiff (respondent) as prayed. The defendant (appellant) appeals against this decision.

G The respondent, however, raised a preliminary objection contending that the appeal has not been properly brought because the provisions of section 68(2) of the Courts of Judicature Act and Order 54 rule 22A have not been complied with, the judgment being an interlocutory judgment. No application has been made for further argument in open court and no certificate was given by the judge that no further argument was required.

H The Courts in England have tended to differ in their views of what is the proper test to be applied as to whether such a judgment is interlocutory or final, but this court has consistently applied what is known as the *Bozson* test which, as laid down by Lord Alverstone in *Bozson v. Altrincham Urban District Council*<sup>(1)</sup> is this:

I "Does the judgment or order as made, finally dispose of the rights of the parties? If it does then I think it should be treated as a final order, but if it does not, it is then in my opinion, an interlocutory order."

The *Bozson* test was first adopted by our then Court of Appeal in *Ratnam v. Cumarasamy & Anor.*<sup>(2)</sup> and has since been applied by this court in *Peninsular Land Development Sdn. Bhd. v. K. Ahmad* (No. 2)<sup>(3)</sup> and